

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**Iowa Quality Farms, L.C.
Facility I.D. #60702
Wright County, Iowa**

ADMINISTRATIVE CONSENT ORDER

NO. 2009-AFO- 07

TO: Austin DeCoster, Registered Agent
Iowa Quality Farms, L.C.
2674 Highway 69
Galt, Iowa 50101

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Iowa Quality Farms, L.C. (Iowa Quality Farms) for the purpose of resolving the issues surrounding lagoon berm erosion at DeCoster Sow Farm 8 in Clarion, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dale Adams, Field Office 2
Iowa Department of Natural Resources
2300 15th St. S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 and Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section

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455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Iowa Quality Farms, L.C. owns a swine confinement operation located at 2603 Madison Avenue in Clarion, Iowa (NE ¼, Section 25, Dayton Township, Wright County). The facility is known as DeCoster Farms Sow 8. DeCoster Farms Sow 8 has six confinement buildings with a total animal capacity of 3,900. The facility utilizes two lagoons for manure storage.

2. Over the course of the past nine years, DeCoster Farms Sow 8 has had problems with the maintenance of the lagoon berms. During an Unformed Manure Storage Structure Inspection in December 1999, DNR Field Office 2 indicated that there was rodent damage to the berm and that it needed to be repaired. On December 14, 1999, DNR sent a letter to Iowa Quality Farms stating the deficiencies at DeCoster Farms Sow 8 had to be corrected.

3. During an Unformed Manure Storage Structure Inspection of DeCoster Farms Sow 8 in October 2001, DNR Field Office 2 noted the north berm of the south cell had erosion below the outfall pipe from the north cell. The report indicated the areas should be repaired.

4. During an Unformed Manure Storage Structure Inspection of DeCoster Farms Sow 8 in July 2002, DNR Field Office 2 noted excessive weed growth on the berms. On July 18, 2002, DNR sent a letter to Iowa Quality Farms stating the deficiencies at DeCoster Farms Sow 8 had to be corrected and a written response was required to be submitted to DNR Field Office 2 within 15 days of receipt of the letter.

5. During an inspection of DeCoster Farms Sow 8 in November 2005, DNR Field Office 2 noted shelf erosion on the interior of the primary and secondary cells due to wind erosion. The shelf erosion had cut at least one foot into the interior of both cells. On December 9, 2005, DNR sent a letter to Iowa Quality Farms stating that an engineer must certify the integrity of the lining and that the lining was repaired. On December 22, 2005, Iowa Quality Farms sent a letter to DNR Field Office 2 stating that the repair work on the berm at DeCoster Farms Sow 8 would be completed in the spring and summer of 2006. The following work would be completed on the berms: 1) repair erosion on the berms and around the inlet pipes; 2) install rip-rap in same fashion as other Iowa Quality Farms facilities; and 3) have an engineer inspect the work and provide an integrity certification.

6. During an Unformed Manure Storage Structure Inspection of DeCoster Farms Sow 8 in June 2006, DNR Field Office 2 noted that the shelf erosion had not been corrected and the facility contact was unsure of when the work would be completed.

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7. During an Unformed Manure Storage Structure Inspection of DeCoster Farms Sow 8 in May 2007, DNR Field Office 2 noted that the shelf erosion had not been corrected. During a telephone conversation with Heath Blau, Iowa Quality Farms employee, DNR Field Office 2 was informed that the facility was in the process of obtaining a bid on the lagoon and that the repairs would probably take place in the fall of 2007. On May 17, 2007, DNR Field Office 2 issued a Notice of Violation letter for the berm erosion control violation as noted during many inspections by the field office. Iowa Quality Farms was required to have the berm repaired and the integrity of the berm certified by a professional engineer by December 1, 2007. The facility was informed that failure to comply with the requirements would result in the matter being referred for further enforcement.

8. On December 12, 2008, DNR Field Office 2 spoke with Mr. Blau. He stated that the shelf erosion had been completed. He stated that some of the work had started, but that they were not able to complete the project because of the weather. On December 19, 2007, DNR Field Office 2 sent a Notice of Violation letter to Iowa Quality Farms for failing to correct the berm erosion as required by the May 2007 Notice of Violation letter. The letter informed the facility that the matter was being referred for further enforcement.

9. On August 26, 2008, DNR Field Office 2 confirmed that the shelf erosion on the north and east sides of the north lagoon had been repaired. DNR Field Office 2 also noted that the inside berms on both lagoons had been graded and riprap had been put in place.

10. Iowa Quality Farms neither admits nor denies the Statement of Facts, Conclusions of Law and statements in the Penalty section stated in this administrative consent order and enters into this agreement for settlement purposes in order to avoid further litigation.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.308(4) requires that the DNR conduct a routine inspection of each unformed manure storage structure at least once each year. The visual inspection includes, but is not limited to, determining whether any of the following exists: (1) an adequate freeboard level; (2) the seepage of manure from the unformed manure storage structure; (3) erosion; (4) inadequate vegetation cover; and (5) the presence of an opening allowing manure to drain from the unformed manure storage structure. Since 1999, DNR Field Office 2 has conducted a yearly inspection of the unformed manure storage structure at DeCoster Farms Sow 8 and many of the inspections resulted in deficiencies.

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3. 567 IAC 65.15(15)"b" requires that the owner of a confinement facility operation with an anaerobic lagoon, earthen aerobic structure, earthen manure storage basin, earthen waste slurry storage basin, or earthen egg washwater storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found which may impact either structural stability or liner integrity shall be corrected in a timely manner. During inspections in 2005, 2006, and 2007, berm erosion was observed at DeCoster Farms Sow 8. The facility was required to correct the berm erosion and to date the erosion has not been corrected. The above-facts indicate several violations of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Iowa Quality Farms agrees to do the following:

1. Iowa Quality Farms shall submit the final engineer certification for the repair project to DNR Field Office 2 within 30 days of the date the Director signs this administrative consent order;
2. Iowa Quality Farms shall inspect the berms on a semiannual basis and submit the inspection results to DNR Field Office 2 within 10 days of each inspection; and
3. Iowa Quality Farms shall pay a penalty of \$10,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$10,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to correct the erosion problems with the berms at DeCoster Farms Sow 8 has allowed Iowa Quality Farms to save time and money. Iowa Quality Farms has been able to delay the expense of the repair since at least 2005 when it was first required by DNR Field Office 2. Iowa Quality Farms has saved the cost of equipment, labor and the professional engineer's fees for almost three years. Based on the

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above facts, it is estimated that Iowa Quality Farms has gained at least a \$4,000.00 economic benefit by delaying the repair of the berm and that amount is being assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. By failing to repair the berm in a timely manner, there is a great potential for groundwater and surface water contamination. The failure to properly maintain the berm threatens the integrity of the water quality program. Based on the above considerations, \$3,000.00 is assessed for this factor.

Culpability – Iowa Quality Farms has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Iowa Quality Farms has been aware of the requirement to repair the berm since December 2005. Iowa Quality Farms stated the berm would be repaired by the summer of 2006 and it was not. Iowa Quality Farms then stated the berm would be repaired by the fall of 2007 and it was not. To date, the berm has not been repaired. Based on the above considerations, \$3,000.00 is assessed for this factor.

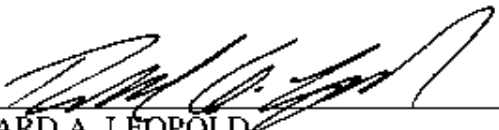
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Iowa Quality Farms. For that reason, Iowa Quality Farms waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

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RICHARD A. LEOPOLD
Iowa Department of Natural Resources

Dated this 6 day of
March, 2009.



HEATH BLUM
IOWA QUALITY FARMS, L.C.

Dated this 25 day of
February, 2009.

#60702; Kelli Book; Field Office 2; Ken Hessenius; Gene Tinker; EPA: VIII.D.2